

**Alexandria Township  
Land Use Board  
Meeting Minutes August 20, 2020**

**Chair Phil Rochelle** called the regular scheduled meeting of the Alexandria Township Land Use Board to Order at 7:33pm. The meeting was duly noticed.

**MEMBERS PRESENT:** Chair Rochelle, Papazian, Fritsche, Freedman, Canavan, Tucker, Deputy Mayor Kiernan, Committeeman Pfefferle, Pauch, and Kimsey

**MEMBERS ABSENT:** Giannone and Hahola

**OTHERS PRESENT:** Kara Kaczynski-Board Attorney, Tom Decker-Board Engineer, David Banisch – Board Planner, Guliet Hirsch – Applicant Attorney, Jay Thatcher – Applicant Attorney, Guy DeSapio – Applicant Attorney, Beth McManus – Applicant Planner, Wayne Ingram – Applicant Planner, Robert Longo, Mitch Ardman, Ken Schapiro, Greg Crance

**Approval of the July 16, 2020 Meeting Minutes**

A motion to approve the July 16, 2020 meeting minutes was made by **Canavan** and seconded by **Kimsey**.

**Vote: Ayes:** Chair Rochelle, Papazian, Fritsche, Freedman, Canavan, Tucker, Deputy Mayor Kiernan, Committeeman Pfefferle, and Kimsey. **Abstain:** Pauch. **No Nays.** Motion Carried.

**New and Pending Matters**

**Kaczynski** advised the attendees of the meeting that the time limit will be that the last applicant will be heard by 10:00pm and the last witness will be called by 10:30pm.

- Schapiro – Variance  
Block 6 Lot 11.13  
1 Hilltop Road

Guliet Hirsch, attorney for the applicant explained that the home was originally part of a subdivision that received preliminary approval July 1, 1987, the final subdivision approval in January 1988, and received a CO in 1989. This particular property received it's CO in 1996. She advised the application is for an addition to the home which requires variances. The proposal is for a new two car garage, on top of the garage first floor, which would be an extension of the existing living area in the home, and a second floor converting one existing bedroom into a laundry room and adding a new bedroom in that area. There are two variances that have been identified. One for impervious coverage, the impervious coverage limit in this zone and on this property is 10% with the proposed addition, the impervious coverage will go up to 15.6%. The second variance is to add a second driveway, only one driveway is permitted. The property is located in the Highlands Planning area and not the Highlands Preservation area, the exemption referral ordinances would not apply because the property is not in the Preservation area. The applicant has four witnesses tonight. In light of the heavy agenda, she wants to ask everyone to do their tasks in as much of a summary fashion as is possible to ask any questions and get any additional information the Board may need. Hirsch asked how to swear in the witnesses. **Kaczynski**

advised all at once is fine. Hirsch advised here tonight are Ken Schapiro - applicant, Robert Longo – architect, Mitch Ardman - architect, and Beth McManus – Planner. **Kaczynski** called Ken, Robert, Mitch and Beth and asked everyone to raise their right hand and swore them in. Mr. Schapiro testified that he is adding a lower level, which is equivalent to the basement with two garages, one is to store a car and the other is for storing sporting equipment. The sporting equipment is a ski simulator and is large. He needs a large door to get it in and out. The addition on the main level would be making the kitchen bigger. On the third level they are adding a bedroom suite and also making it elevator ready. The idea is for his dad who is 88 years old and his in laws in their late eighties to live with them. They are making it elevator ready so that they can drive in and take the parent into their own room via the elevator. The elevator is not going in yet. Mr. Schapiro talked to the three closest neighbors in his area and everyone is very supportive. He has lived in Hunterdon County his entire life and in this house for 24 years. He owns several properties and has done some redevelopment work. Hirsch asked Mr. Schapiro if it is possible to reduce the size of the addition to reduce coverage requirements and still meet his goals of providing more space for his family. He advised that it would not be possible in order to accommodate the needs of his wife for a bigger kitchen, the equipment, and the needs of the suite for his father and in-laws. **Kaczynski** advised that the application and all the documents submitted with the application to be listed as Exhibit A-1. She asked if there was anything else that the applicant would like to produce to the Board that would be part of A-1. Hirsch clarified that the attorney letter dated March 12, 2020, the application and plans submitted are part of A-1. **Kaczynski** advised that is correct. Hirsch advised, the other things to be considered for exhibits, in response to comments from Mr. Decker and Mr. Banisch, are a revised architectural drawing, two sheet site plan drawings, and letter submitted with a revision date of July 28, 2020. **Kaczynski** advised that A-2 will be the revised architectural drawing that was submitted to the Board on July 28, 2020 and A-3 will be revised site plan/engineering drawings submitted to the Board. Hirsch asked if the Board has any questions for Mr. Schapiro, there were none from the Board. **Kaczynski** asked if there were any questions from the public for Mr. Schapiro, there were none.

Hirsch advised the next witness is Robert Longo, a licensed architect in multiple states for 31 years, whose credentials were approved as an expert by the Board. Mr. Longo advised the Board that what they are looking at is a three-level addition; a basement, and then a first and second floor addition. The footprint of the basement is 25'x31' which is 775 sq. ft. The first and second floor additions are a little smaller; they are 25', same width but they are 23' 4" deep which is 585 sq ft. which connects to an existing deck off the rear of the house, which is approximately 235 sq. ft. Basement level contains a garage, and a large piece of sporting equipment. The plan shows a graphic of a car and a graphic of the sporting equipment which is larger than a car which necessitates a slightly larger two car garage. That room dictates the footprint of the entire project. The first floor is an extension of the living space. The primary goal here was to make a larger kitchen, so the kitchen is extending into what was the dining room and the addition is now housing a dining room as well as a pantry space and a small sitting area. Mr. Longo shared his screen with the floor plans. The second floor has a fourth bedroom, with a full bath, and a walk-in closet. They are converting a bedroom into a laundry room and placing the bedroom floor within the confines of the addition. He advised the dark shaded areas, showing the outside of the home on the plan, is what is proposed. From the street, the front elevation is the bottom left and the lighter tone is the existing and the darker tone is the new. He testified that the building height shown on the drawings, that the roofline is lower than the existing roof, which was done purposely. However, based on the definition in Alexandria's Ordinance, the building height actually increases a little over two feet. The height was the revision that the architect submitted based upon **Banisch's** report and comments. The height of the building by definition is based on the average grade around the perimeter of the house up to the average point of the highest point of the roof in the case of a sloped roof.

Because the garage is exposed basement the grade was lowered a little bit, so even though the building is lower visually, by definition it is higher. Regardless, our existing height of the building is 27'6" based on the new grade it would be 29'9", an increase of 2'3" which is still well below the maximum height of 35'. **Chair Rochelle** asked if there were any questions from the Board or the Public of this witness. None were asked. Hirsch asked Mr. Longo if the façade materials, roofing and everything else on the outside of the home in the proposal would match the existing home. Longo confirmed that the new addition would match the existing home.

Hirsch called the next witness, Richard Ardman, who went through his credentials, a principal of the Reynolds group, has been a licensed professional engineer for over 30 years, has been practicing in subdivision and site plan design basically this whole time and who has presented for over 100 municipalities throughout the state presenting projects like this. Mr. Ardman was deemed qualified by the Board to be an expert engineer witness. He went on to explain that this is block 6 lot 11.13 a 2.06 acre property on Hilltop Road. The property is at the end of a cul-de-sac, the property sits at the north side of that cul-de-sac. The adjoining neighbors are the closest ones that are across Hilltop Road. Two other houses are towards the end of the cul-de-sac. There is a property to the east which is an oversized lot and is a good distance away from Mr. Schapiro's house. The driveway presently is on the eastern portion of the lot, comes down off of Hilltop and this whole property slopes away from Hilltop and actually away from the neighboring property to the east. Between us and the neighbors to the east there is a good wood line there. On the westerly side as you are facing the house on the left, there is a park property. There is a good wooded area between the two properties as well. The slide of the plot plan came up on screen. He was alluding to the driveway on the right side of the property in lighter shade is the existing house and the proposed is the darker color. As far as existing conditions go, north will be up on the sheet so east is to the left. On the west side of the house, there is a deck off the back of the lot that steps down to a pool further to the west or the rear of the house. What is being proposed as far as site work goes is a second driveway coming off the cul-de-sac, which can be seen on the left side of the drive which is the west side of the property. That will slope down and will lead to a paved area in front of the lower level which is the garage edition which was described and then the living space is above that area, again it drops to that area, the grading is seen on the plan. Since the completeness hearing and the comments from Mr. Decker; the applicants professionals provided supplementary details as well as a profile for the new driveway down to the house. To help address the additional impervious area, the engineer has provided for a drain system. Down at the bottom of the driveway and in front of the garage, there will be an inlet in that area. Drainage from the bottom part of the driveway, the roof drains will both tie into that inlet and then those will all be piped to a drywell. The six-foot diameter drywell will be downhill on the west side of the driveway, proposed to mitigate the additional impervious area. It was noted that the coverage has gone from 11.8 to 15.8 percent which is approximately a 3600 sq ft increase in impervious area. What is proposed for the new impervious area is less than ¼ acre additional. In a prior report from Mr. Decker, he concurred that since they are below the threshold of ¼ acre, the applicant is exempt from the stormwater management rules. Having said that due to the variance situation, they included a drywell for water runoff storage into the project. The grading on the left side of the property is not near any neighboring property, the water is flowing away downhill from Hilltop road so there will be no impact to Hilltop Road. He concluded these are the site improvements being proposed for the property.

**Chair Rochelle** asked the Board for any comments or questions. **Committeeman Pfefferle** asked if there is a way to bring the driveway across the property to connect to the existing driveway to eliminate the second entrance. Ardman advised that there is an aesthetic viewpoint. Cutting across the front of the

house would disturb the features in the front of the house. It would also be tight from where the septic system is located. It is just on the right side of the proposed driveway. They wanted to make sure they stayed away from the septic. It would be a tight swing to come in off the existing driveway and into this area. They felt this would be the better option for access to the new garage. Mr. Schapiro added that when you put the driveway where proposed, there is minimal disturbance as far as the trees are concerned. This lot has a lot of wooded features to it. The proposed driveway would be hidden into the woods and aesthetically looks much better than going in front of the home. **Canavan** asked if the driveway can be made with a pervious material rather than blacktop or asphalt. Ardman testified that they talked about different kinds of surfaces, but the front part of the driveway is on the steeper side and they wanted to provide a stable driveway in that location and for longevity the asphalt is the better option for the project. Mr. Schapiro added that he looked into other options and came up with a turf stone, which has grass pieces in it but according to our code, counts as impervious and did not help with the impervious coverage. **Committeeman Pfefferle** asked about the percentage of the steepest grade. Ardman advised that it is a 15% maximum. It is flatter at the apron at the road, and then it breaks down to 15% to get back to grade as quick as they can to limit the disturbance on site. Once you get down past that it is 5% and back down to about 2%. It is the first 75 feet that is the steeper section. **Banisch** asked about the septic in the front yard, and was wondering if they were to come across the front yard, if they could even maneuver a driveway due to the turns necessary to put vehicles and the storage unit in the garage. His other comment was to ask if the engineer mentioned the fact that they are tying the roof leaders into the driveway drain as well as draining the driveway itself. Ardman advised it would be a tight turn to maneuver a driveway and vehicle in the front of the house. He said between aesthetics, tree removal and maneuverability, it is best to put in the second driveway opening. He also mentioned that the roof drainage from the house is tied there as well and that it is a tight turn between the house and the septic system if you cut across the front of the house. **Chair Rochelle** asked if there were any additional comments from the Board or public. There were no additional comments.

The next witness was Beth McManus, professional planner for the applicant. She is a licensed planner, she is also licensed nationally, a member of the American Institute of Certified Planners and has been practicing here in NJ since 2001. She has appeared before the Alexandria Land Use Board and multiple other Boards in NJ. Ms. McManus was deemed to be a qualified expert by the Board. She advised that the applicant is here to seek relief for the proposed building expansion at 1 Hilltop Road. The applicant is looking to simply expand the home to provide some additional living space that accommodates the garage area as well as living space for the residents and also accommodating the parents of the home owners. The idea that we are starting to see intergenerational housing is growing across the state and this is one minor example of that. As a result of the proposed building addition the home owners need two variances. The first is the maximum impervious cover and the second is for a variance to permit a second driveway onto the property. The home is located in the AR District. One of the things that is interesting that she wants to recognize in Alexandria's code is that this district requires a minimum lot area of ten acres, but as has already been mentioned; it is significantly undersized with just over 2.068 acres. The Township Ordinance anticipates that there are a number of existing non-conforming lots. As per section 115-60, there is evidence of this consideration. This section allows for adjusted lot standards addressing yard areas. While the ordinance does anticipate certain adjustments being made it stops short of addressing some of the other items the applicant is seeking relief from. The zone district requires a maximum impervious coverage of 10%. The existing impervious coverage on this lot is 11.8% and is proposing to go to 15.8%, thereby creating a C-1 Hardship Variance. This is the type of variance that allows the board to permit relief from zoning regulations where a hardship exists and the hardship has to be specific to the property, meaning that it is perhaps a function of its narrowness, shape of property and unique physical features affecting the property. Here there are a couple of conditions.

One of the more significant conditions that is unique to the site is the significantly undersized lot and is about 1/5 the permitted lot size. The lot is 2 acres and the minimum are 10 acres. While the Township does accommodate certain adjustment to the bulk standards but impervious coverage is not one of them. She believes it is worth noting that if this were a conforming lot based on the proposed conditions, they would be significantly under the impervious coverage that is allowed in the zone. They would be about 3.3% which is well under the 10% maximum. What we have is an undersized lot which significantly restricts the amount of development that can be accommodated under the zoning. Further complicating these existing conditions are the existing improvements on the site such as the existing home, driveway, patio, and pool area, trees, septic system and so these features of the existing lot contribute to the hardship that really affects the way that they can provide the additional access to the site for the new garage area and especially in a way and location that accommodates the desire for an elevator for elderly folks that may be staying or living on the property. And so, the need to avoid cutting across the property, using the existing driveway and going along the front of the property is hampered by the existing conditions and desire to leave the trees intact. Also, to reduce the visibility of the new driveway, being able to utilize an additional driveway access further down the cul-de-sac is helpful in preserving the existing trees and septic system and existing improvements. These speak to the hardship of the property. The additional criteria to be addressed is the negative criteria. There are two components, the first is whether there is any substantial detriment to the public good and the second any substantial detriment to the zone plan and the zoning ordinance. There must be a level of significance to the detriments, which is an important consideration. They are easily able to address the negative criteria. She doesn't see any substantial detriment. In fact, she sees almost none at all. In terms of the public good, in the impervious coverage in the stormwater impact, as heard by the engineer, they will be able to properly mitigate the additional runoff that is going to incur as a result of exceeding the maximum impervious coverage. They are providing an inlet and a drywell to mitigate the additional impervious coverage. As a practical matter they are also adjacent to open space. The reality of the situation is there is a large open space area, which will mitigate impervious cover on the lots around it. In addition, one of the considerations must be not only for the driveway but for impervious cover is whether or not there is a visual impact. There is minimal visibility and no negative visual impact. In part due to the way the home is oriented and its location within the subdivision. The home is at the end of the Hilltop cul-de-sac, this means that the proposed addition faces the open space and no neighbor will have a new view of the additional impervious cover and driveway and the building addition from the west. No direct view. One neighbor across the street that will have some visibility of the driveway and of the proposed addition. However, as they are lined up across Hilltop Road, there is no direct view into the west side of the property, looking into the area of the proposed addition. To the rear, they don't have neighbors in the vicinity for the view of the site. The relief being sought will not have a visual impact for the neighbors. If you recall from the engineering plan, you can see some undulation of the lot where the driveway is proposed. For example, the grade goes from 450 near the hilltop curb cut down to 442 and then back up to 446 and so this undulation as well as the existing trees all near the front of the property will obscure the view of the driveway. It is not going to be a full screen, but it will provide some filtered view of the driveway, as opposed to it being front and center. As a practical matter being at the location at the end of the cul-de-sac, the traveling public will have almost no opportunity to see this. If you are not traveling to the Schapiro house or the house across the street there is no evidence that the home has had an addition or the additional driveway. For these reasons, she doesn't see any detriment to the public good. In terms of the zone plan, the first thing done was to take a look of the purpose of the AR district. Some of the more important points of the AR district is preserving areas that are important and critical natural resources and preserving the open-air cultural character of the area. In terms of natural resources, they are not disturbing any critical natural resources. In fact, they are designing the proposal around the existing trees in order to preserve those

features which serve environmental benefits as well as visual benefits. As a result of the sensitive design and as result of the location at the end of the cul-de-sac, in a small neighborhood, McManus testified that she does not see any impact of the agricultural character of this area. She doesn't believe that the proposed addition will somehow change the character for one that is agricultural and rural to something alternative. Instead, this is a site with building improvements that are somewhat hidden within a small neighborhood. One more point is the critical natural resources, that there is no negative impact from the stormwater and they are able to mitigate this with the inlet and drywell discussed. In addition to look into the AR District purposes, she also reviewed the objectives of the Master Plan and there are two objectives that are helpful. The first one is to identify and respond to existing and potential residential growth pressures in the township while maintaining the rural character in an effort to promote current state planned policies, which then goes on to discuss objectives for agricultural and rural character. The second goal is identified as number 3 in the master plan which is to encourage residential development in areas of the Township, leaving other areas relatively free for agricultural open space and in that manner to help serve the agricultural recreational conservation needs in the region. She testified that she believes the proposal is supportive of both of these goals and objectives of the master plan, because they are able to accommodate the proposed improvements, the addition and the driveway without having negative environmental impact and negative impact to the stormwater. They are able to do so without disrupting the character of the AR district. If they are granted the request, this also means that it facilitates folks being able to stay within their home and continue to live within their community and expand their home without the need to construct an additional home or move to a larger home outside the community. This helps to maintain community in Alexandria Township and to do so without the need to construct a new home elsewhere with additional disturbance associated with it. For these reasons, for the purpose of the AR district and in support of those two purposes of the Master Plan this enables them to not have any additional detriment to the zone plan. McManus asked if there are any additional questions for her that the Board or public may have. **Banisch** advised he had no additional questions. **Chair Rochelle** asked if anyone else from the Board or public had any questions. **Committeeman Pfefferle** asked if they considered to completing the addition on the other side of the home. Mr. Schapiro testified that side of the home would be too close to the lot line and that there is an existing well at the end of the driveway and would cause too much disturbance and he wouldn't have the setbacks on the side yard. **Kaczynski** advised the Board could have a motion on all of the relief requested and have a discussion after that. She advised that if there is a need to break it up, that can be done, but one motion should suffice. Ms. Hirsch advised that in light of the testimony she did not see a need for additional summation.

**Chair Rochelle** asked for a motion to approve the two variances on the application. The first for the impervious coverage, and the second is for the second driveway to the road. **Kimsey** made the motion and was seconded by **Fritsche**. **Chair Rochelle** asked if there were any comments from the public regarding the variances. He noted that there were no comments from the public. **Chair Rochelle** commented that the applicant has addressed the issues presented before the Board with regards to the stormwater issue and have addressed the issue of the driveway. **Pauch** asked if the Board Engineer checked the sizing of the drywell and if it will handle all the water from the roof and the new driveway. **Decker** advised that he did not check the sizing because it is not required since they do not exceed the stormwater management threshold of  $\frac{1}{4}$  of an acre. They are doing it to offset their own site impervious coverage. He advised there is no requirement for the drywell. He also advised that based on his review letter all the technical comments of April 15, 2020, items 4-8 have all been satisfactorily addressed with the revised plan submitted. **Kaczynski** asked if **Banisch** had any comments in his report that remain to be addressed. **Banisch** advised all the comments in his reports were addressed, especially the planning testimony comments which were really two comments in his letter that required a response, and said

everything has been addressed. **Decker** also added that at the end of his letter dated April 15<sup>th</sup> items 9 and 10 identify two conditions should approval be granted. The first is that since the disturbance is more than 5,000 sq. ft., a soil erosion sediment control permit is required from the Hunterdon County Soil Conservation District and the second would be receipt of a driveway permit in accordance with Chapter 89 Driveways. **Kaczynski** added to that the standard conditions of the Board with regard to receipt of any and all other approvals that may be required; and of any and all escrows that may be required and compliance with testimony provided by the applicant and the applicants professionals. **Chair Rochelle** asked if there was anything else. As there were no additional questions, roll call was taken. **Vote: Ayes: Chair Rochelle, Papazian, Fritsche, Freedman, Canavan, Tucker, Deputy Mayor Kiernan, Committeeman Pfefferle, and Pauch. No Nays. Motion Carried.**

- **Bush-Bennett – Use Variance**  
Block 7 Lot 15  
536 Woolf Road

**Chair Rochelle** advised that next on the agenda is the Use-Variance application for Bush-Bennett. At 8:29pm **Kaczynski** noted for the record that Deputy Mayor Kiernan and Committeeman Pfefferle are recused for this application. **Kaczynski** swore in the witnesses Tammy Bush-Bennett, applicant and Wayne Ingram, Planner for the applicant. **Kaczynski** put on the record the public hearing has been properly noticed and requirements have been met. She also advised that the application, cover letter and all submissions with the applications will be marked for the record as Exhibit A-1. Mr. Thatcher verified that Tammy Bush-Bennett is the applicant and that it is for Block 7 Lot 15, located on Woolf Road. In addition, he verified with the applicant that her property is approximately 44 acres in total. Thatcher asked Ms. Bush-Bennett to briefly describe the property. She advised that the property consists of two homes, there is about 30 acres of open fields surrounded by a tree line. Both homes sit about 300' from the road. The homes on the property are about 150-200 feet apart from one another. There are two additional structures; one barn and one pavilion that are located behind the original farm house. The farm itself is adjacent to the Alexandria township park and also has direct access to the horse trail that runs through the town. Thatcher asked the applicant if she describes her property as a farm, and is it farmland preserved. She verified that is correct. He asked if the property is a farm. She responded that they are currently in CRP program and are only required to mow the fields during a certain time of year. She testified that the property was owned by her father, Edward Bush Sr. She believes he purchased the property with her mother and his parents back in 1950 give or take a year. Her father lived there for the remainder of his life. He passed away in October 2014. Ms. Bush-Bennett is the executrix of her father's estate. She and her four siblings inherited the property. Thatcher asked about the second home. He advised that when her parents purchased the property there was only one residence, and then sometime after that a second home was built. Ms. Bush-Bennett advised sometime in the late eighties, there was a barn that was converted into a wood making workshop. A few years later possibly early 1990's, her parents had added a home to the existing workshop. The addition is a home that consists of 3 bedrooms, 2 baths, a living room and a kitchen. The home is two stories. It was attached to the existing workshop, which was originally a barn on the property. Her brother and his family lived there initially. Fifteen years ago after that, his son and his family moved in. Now it is occupied by a renter, who initially paid \$2200/month. In lieu of taking care of the property, for example mowing the grass, they reduced the fee to \$1900/month. Thatcher verified with the applicant that the second home is visible from the road and that it has electric, gas, and is tied into a septic system. He asked if she was aware of any issues with the home, i.e., permits or problems with the town after her father had passed, she advised she was not aware of any issues. Thatcher asked since her ownership, if

she applied to Alexandria township for any type of permit. She did not request any new permits, however back in July 2018, she requested a construction clearance for an outstanding permit from years prior, which she was able to rectify. She also applied in 2018 for a smoke certification for both homes and received the certifications for both homes; one for 536 Woolf road and one for 538 Woolf road and there were no issues at that time. Thatcher continued that the applicant listed the property for sale and found a buyer and entered into a contract. After she entered into the agreement, she was given two violations from the Township. One of the violations was for allowing occupancy prior to receiving a Certificate of Occupancy and the second violation was for failure to obtain a construction permit. The applicant recalled the violations and testified that they were a surprise to her and she had no prior knowledge. The Township has no records to construction of the home. In the planner's report, it says the application does not state what has prompted the construction code official to issue these notices. This should be explained in testimony on how it came to light. The applicant testified that she has no idea how it came to light. Subsequently, she learned that the township has no records with regards to permits for construction of this home. The applicant testified that two dwellings on this 44-acre lot have not been a secret as you can see both homes from the road. In 2006, her father received minor subdivision approval, on the subdivision map it clearly indicates two single family residence on the plan. To her knowledge, nothing was said to anyone. In 2006, there was also an application for Farmland Preservation and again that submission indicated that there were two family residences clearly indicated on the plan. To the best of the applicant's knowledge, the family has been paying taxes on both dwellings for about 30 years and the tax records clearly show there are two family residences on this property. She had never received a complaint regarding the two homes on this property and to the best of her knowledge, neither did her father until October of last year when she received the two violations. The applicant opted to come before this board based on the advice received from the Township attorney in order to resolve the issue. She is also seeking a variance to permit two dwellings on the property to continue the use that has been going on for the last 30 years. **Chair Rochelle** asked if the Board has any questions. **Pauch** asked if the applicant had any documentation of building permits, or applications other than the preliminary application for the minor subdivision. The applicant advised that she did request information from the township and the documentation received appeared to be permit requests for the work that had been done on that house. **Kaczynski** asked if the information was submitted to the Board. Ms. Bush-Bennett testified that she thought she received a document for construction on the new house. Thatcher advised that the document was not clear and was roughly filled out and confusing. That was the only document received from the municipality and it appeared to be a request for a permit. There was an issue as to whether it was for house number 1 or number 2. **Chair Rochelle** asked about the previous subdivision that was applied for and asked if it was granted. The applicant testified that prior to going into Farmland Preservation, there was a piece of property that her father's brother had put in a septic system and it encroached on a piece of his property, so it needed to be subdivided and given to her uncle so that the remaining property could be put into the Farmland Preservation since it needs to be clean land. **Chair Rochelle** asked the applicant to clarify that it was for a lot line adjustment to accommodate a septic system on an adjoining piece of property and the applicant agreed. The applicant testified that it was not a subdivision to split off the property for the dwelling in question. He also asked if the second home has its own septic system or well. The applicant testified that it has its own septic system but not its own well. **Kaczynski** asked if there was any research into the county for the approval of both of those septic systems. The applicant was not aware of any. **Kaczynski** also noted in regards to the permits that the applicant testified to; there were not any copies of the permits provided to the Board in the application. She advised that without copies of the permits, the Board would not be able to consider those in connection with the hearing. **Chair Rochelle** asked if there was ever an application made to the zoning officer for the construction of a second dwelling. The applicant did not know. **Chair Rochelle** asked if there was an application made to the building dept for a



permit to construct of a second building. The applicant advised that she assumed there was and the permit she received, that the Board did not have a copy of, was from the building department and looked like a building permit for the second building. Thatcher advised that since the applicant has inherited the property, there is really no way to determine what he had done with regards to permits. **Chair Rochelle** asked Mr. Thatcher if he had researched the ordinance to determine if there was any provision that would allow for a second dwelling on this lot. He advised that he was going to leave this to the applicant's planner, Mr. Ingram. **Kaczynski** advised to the members of the public that the application before the Board is for a Use Variance, and not for a non-conforming pre-existing use. Thatcher advised that in going through his file there were two construction permits issued in October 1994 for 536 Woolf, the original farmhouse, and a second permit for 538 – 2<sup>nd</sup> house but it does not clarify the job summary. **Kaczynski** advised that the Board will not be able to hear that evidence without being submitted 10 days prior to the public hearing. She advised that if he would like to present that evidence the applicant could adjourn and then submit that information. **Chair Rochelle** felt they should continue with the testimony. **Kaczynski** advised that would be fine. **Banisch** testified that there are some provisions in the Ordinance that would allow for accessory uses in sec. 115-22 Use Regulations, subsection H.-2 Residential accessory Structure, the option there is the H-2a) Accessory Residential Dwelling unit option and also the H-2 a.3.1 Affordable Accessory Apartment Unit option. He advised in all cases they are accessory dwelling units to a principal permitted single family detached dwelling. **Chair Rochelle** asked for an overview on the first code cited by **Banisch**. **Banisch** advised the first is not applicable as a dwelling unit. He advised the H-2 a. Accessory Residential Dwelling Unit is expressly a residential dwelling unit that is permitted in the AR zone and that structure has to be utilized by domestic servants, caretakers, farm labor, family members, or for occasional gratuitous guests. The bulk requirements for the AR zone apply and there is a parking requirement of one-off street parking space allocated to the accessory residential dwelling unit. It is a permitted use on lots of at least 40 acres or larger who's principal use is the farm. **Banisch** advised that technically this lot meets the conditions for this conditional use provision in the ordinance and that conditional uses need to be applied for. If for example, this had been previously approved, presumably there would be some records somewhere but would have had to come before the Board as a conditional use application. It would then qualify as an accessory dwelling unit assuming the Board granted conditional use approval. He continued that the Affordable Unit option that is an accessory apartments ordinance, but could qualify as an accessory apartment; it requires a ten 10-year affordability control, as an affordable unit, in accordance with New Jersey's affordable housing regulations. That too is permitted by conditional use, there are a series of standards of which the Board would review that second accessory residential dwelling unit. There are additional NJ state regulations as well. He described the ECHO units as well, however the first two options are more closely applicable. **Fritzsche** felt that farms in Farmland Preservation have restrictions in the second dwelling being used for family and would need to look at the agreement. **Banisch** referred to his review letter dated July 14, 2020:

2. The SADC Deed of Easement identifies what is referred to as a "Non-severable Exception" that includes the two subject dwellings for which a variance is sought. They existed at the time the farm was preserved. The exception is referenced on pages 2 and 3 of 6 of SADC Deed of Easement in paragraph 13(b), which states that the property owner "... may use and maintain the Exception Area (1), as described in the attached Schedule C(1), subject to the following conditions:
  - a. the exception Area shall not be severed or subdivided from the Premises,
  - b. the exception Area shall be limited to two existing single-family dwellings,
  - c. Grantors, grantor's heirs, executors, administrator, [etc] ... are hereby notified and made aware that agriculture is the accepted and preferred use of the adjacent

Premises and that the adjacent Premises shall continue in agricultural use as defined in Section 2 of the Deed of Easement.” Section 2 of the Deed of Easement states that “The premises shall be retained for agricultural use and production in compliance with” the farmland preservation laws and rules promulgated by the SADC.

**Banisch** advised the conditions fit into the H-2(a) Accessory Dwelling unit for a farm lot. **Chair Rochelle** asked the Board attorney if what was stated in the deed, with the limitations of the SADC for the approval of the preservation and the limitations of the use of the second dwelling, if that supersedes the Board’s authority. **Kaczynski** advised that it does not supersede the Board’s authority, and that it basically recognizes that the dwelling existed. It doesn’t talk about whether or not it was approved properly by the Board and secondly if it was intended to be utilized in the farm manner that the exception or the conditional use that **Banisch** just noted would appear to apply. She would say that if the Board gets to a point of conditions to be placed in any motion, this certainly could be a condition that a SADC approval of what is authorized with this specific use would apply, but it does not resolve the zoning issue before the Board. It is currently used as a rental and that is not permitted. **Banisch** advised in his first report that he reviewed and compared the applicant’s situation to the provisions in the ordinance for the H-2(a) Accessory Residential Dwelling Units for farms and it complies with everything except the fact that it is being used as a rental. He advised that would have to be a condition of approval if that is what the applicants sought. **Pauch** asked if the applicant contacted the county to find out if there was a septic design approved for the second house. Ms. Bush-Bennett advised she does not know if the county has a septic design approval. She believes the engineer was Boren & Boren who completed the septic. **Pauch** also asked if she has tax records as to when her parents started to pay taxes on the second dwelling. Mr. Thatcher said he was not able to get tax records on the property, that the tax assessor would not release them due to attorney client privilege. He read the statement from the Township on the OPRA request to the Board. **Kaczynski** advised to file an OPRA request again that the tax records themselves are public information. **Chair Rochelle** asked if there were any questions of the Board and of the public for this witness.

The next witness was the applicant’s planner, Wayne Ingram. He gave his credentials and was deemed an expert by the Board. He testified that he went through aerial photographs of the structure. The western structure, the old farmhouse was found in aerial photographs from 1953, however is older than that. The second structure was first visible in 1988 photographs, though it appears to be back further in and a smaller size. He advised through previous testimony that there was an addition to this structure after an addition was added onto the barn/woodshop structure. He advised that they look at it as also having legal connects such as water, gas, and electric that would be hard to get connected to a residence without having proper permits in place. In terms of the use of the property, he concurs with the Board planner’s assessment of the H-2 a. Residential Accessory Dwelling unit is the closest in conformance to what they are requesting. He recapped that it is a 44-acre lot where they have two units in basically a one-acre exception area, in which the H-2 a. requires a 40-acre minimum which they have. The zone itself only requires a 6-acre lots. In 2006, when this home existed, the subdivision plans and preservation plan show both homes, and the dwelling in question as a principal dwelling on that approved plan. At the time it was considered a principal dwelling in the lot with no known restrictions on its use. Since the subdivision took place and subsequently the farmland preservation, now the owner does not have the option to put that house on a separate lot. If that weren’t the case, this would be a scenario where you could create a subdivision line down the middle and make these both conforming structures on their own lots with 20-acres and they would be in full compliance. There is now a unique property which prevents this and a unique condition affecting this property. He advised economic inutility is one characteristic that we can use to support site suitability. The initial Farm Preservation

provided an initial payment for the development rights, but does not provide consistent income to help maintain the farm, property and dwelling units. The current owner, not having any knowledge of this restriction on the property, has come to rely on that structure for income on the property believing it was a legal structure. The alternative of demolition would create a hardship to the current owner. He advised that instead of being broken up and subdivided into three or more properties it was preserved with the belief of having two legal residences, in effect creating open space and leaving the largest parcel for farmland and open space. He feels granting a variance in this application will not create any detrimental impacts, since these units have existed together for 32 years in full sight of the township and the neighbors and there have been no complaints. The dwelling units are a minimum of 350 feet from the property lines through a wooded area with a stream in between. Neither have been a detriment to the neighbor. The density is in line with the zone with 6-acre lots. They meet all of the conditions of the H-2 except the restriction of who may use the dwelling unit. He doesn't feel that a landowner would use this property as two rental units; one would be occupied by the landowner and the second a family member, farmhand or a tenant. He doesn't feel the dwelling would be an issue due to the owner living onsite. There is approximately 150' between the buildings and won't want a problem that close to where they live. He doesn't believe the application is in conflict with the Master Plan, or zoning plan and preserves open space. The intent to preserving the property in the first place prevented the loss of farmland and what the original subdivision plan accomplished which was shown on the plan at that time. Given the small footprint that they occupy serves the goal of preserving those features. He concluded by saying it would be an economic hardship for the owner, and that no one hid the fact there was a second dwelling. **Banisch** asked about the second dwelling having a home like appearance and if the barn and workshop were converted, and if Ingram had physically inspected the building to see if there was evidence of the barn and workshop. Ingram advised that he visited the structure but did not go inside, from what he witnessed visually the building is in the same place and the addition appears to be on the left. A discussion ensued between **Banisch** and Ingram regarding utilities extended to the second home and if this led to an illegal conversion of the home. **Banisch** advised that the unique conditions that the applicant's planner previously described appear to be of the owner's own making due to the previous decision that was made to enter the Farmland Preservation program. Ingram felt that since the owners did not know there was an illegal structure in the first place, this has become a hardship. **Banisch** felt that the assumption made by the planner that one dwelling unit would be owned by the home owner and the other rented, would not be correct. He felt another owner could rent out both of the dwelling units. Ingram said it would not be a certainty but a more likely scenario that the owner would live at the primary dwelling and would only rent the second dwelling. **Banisch** advised that it would be helpful to know what the situation is with the septic system on the property and it would be helpful for the Board to see the existence of a second septic system if there is one. **Banisch** also advised that he doesn't believe there is a whole lot of weight of evidence on anyone's awareness of the legal status of the two dwellings that had shown up on the minor subdivision application years prior. It seemed to have been submitted purely for the purpose of getting this through the Farmland Preservation program. He advised there was missing information regarding what may have prompted the scrutiny on the property back in October 2019. **Banisch** suggested that there may not be enough evidence submitted to warrant the granting of the requested variance. He felt the comment regarding the economic inutility that was made was not correct. He advised for a preserved farm, farm enterprise, with a single-family detached dwelling, and a principal dwelling, that there is an ordinance that provides for housing for the help and is certainly some municipal assistance offered through the Township's Land Use Ordinance. This ordinance assists farmers with the enterprise of farming, in addition to the Farmland Preservation project itself. It is an opportunity to enhance the economic viability of the farm enterprise, as opposed to the current situation. He doesn't feel that the reliance of relying on the rent to operate the farm does not establish evidence of economic inutility.

Ingram asked if additional documents would help prove that this is a legal dwelling, if it only establishes that a residence was there. **Banisch** advised that there is a way in the code to provide the property owner to collect some rent through an affordable unit. **Fritsche** advised that he didn't think the SADC would approve that use. **Banisch** advised that according to what he found with regards to comment #2 from his report that it could be viable, but to perhaps have the Township attorney review that. **Tucker** believes that with regards to the one-acre exception, that is a municipal land use not the SADC. **Banisch** agreed that he does not believe the SADC has any jurisdiction over that. **Kaczynski** advised that she was looking at the references for the deed of easement. It talks about schedule B, which talks about uses for the single families, but it was not attached. **Fritsche** advised that he has experience with putting property into Farmland Preservation and information with regards to what can and cannot be done is in the closing documents. **Banisch** advised that schedule B is in the metes and bounds description but does not specifically speak to the individual uses within the exception area and that there are no use provisions in that attachment. **Banisch** advised to Ingram that he is not sure if submitting additional evidence will be positive for his case. Ingram felt that the additional evidence will not prove the use of the residence. **Chair Rochelle** advised that he can not say right now whether or not the additional evidence will help. Ingram advised they would look for the documents, provide them and go from there. Thatcher agreed. They discussed having the documents ready for the next meeting on September 17<sup>th</sup>. **Kaczynski** advised it could be carried to the September 17<sup>th</sup> meeting, and if there is an issue it could be carried again to the October 15<sup>th</sup> meeting. **Kaczynski** advised the motion is to carry this matter to the September 17<sup>th</sup> meeting of the Board, the applicant shall provide whatever additional proofs that they would like the Board to consider by September 4<sup>th</sup>. **Chair Rochelle** made a motion to carry the meeting to the September 17<sup>th</sup> meeting. **All Ayes. No Nays.**

- **De Sapio Properties #6 Inc and Delaware River Tubing Inc – Amended Site Plan  
Block 17.01 Lot 12  
776 Milford-Frenchtown Road**

**Chair Rochelle** announced De Sapio Properties as next on the agenda. Mr. De Sapio requested that the matter be continued to the October 15<sup>th</sup> meeting. The primary reason being while they had been waiting for their turn, they reviewed the letters by the Board Engineer and Board Planner in further detail and they would like to do some additional updates to their plans to go more smoothly before the Board. They don't feel they could get that in 10 days prior to the meeting. One reason is for the additional data of the traffic engineer, who will be going out this weekend. He wants the reports to be complete and correct. **Kaczynski** asked if the conditions of the prior approval have been complied with and they will all be addressed as well. De Sapio advised that there will need to be a conference call between Mr. Decker and Mr. Simons because communication with regards to the final drawings do not seem to be working, and he is requesting the opportunity to do that. He thought that he had submitted a set of drawings that addressed Mr. Decker's concerns but apparently, they did not. As he understood the only thing that remained to be done with regards to the 2006 approval was to have a set of drawings that reflected 5 or 6 items that Mr. Decker wanted noted on the prints and a final set of prints be submitted and a landscape plan be submitted. He believed that they had done that, but apparently, they did not and that is why he is requesting a conference call between himself, the Board attorney if she chooses, Mr. Decker and Mr. Simons to find out what is going on. **Chair Rochelle** advised for the record the applicant is not prepared to move forward at this point and is requesting it to be tabled to the October 15<sup>th</sup> meeting. De Sapio said yes and advised that they could move forward if the Board insisted but they do not believe that would be an efficient way to approach this. They want to provide all the information the Board needs and in a format that will be easier for the Board to review. De Sapio stated that he consents to an extension of time too. **Decker** advised with regards to the outstanding

items from the 2016 approval, the only plans that he received were back in February, that did not have any of the conditions satisfied. **Decker** advised that he sent De Sapio an email when the question came up about if that was the plan, if there could be a response letter point by point to that. **Decker** advised that he has not seen that letter, the landscaping had not been addressed and hasn't seen any new plans since then. De Sapio asked to clarify if that was the email that said Mr. Simons should identify what the changes were from the previous plan. **Decker** confirmed that was the email and that it would help expedite the resolution of this, if those plans that were submitted addressed those items, but he did not see anything in regards to landscaping or anything like that on those plans. He doesn't believe that they addressed the outstanding conditions. De Sapio asked if Decker would be averse to a conference call with Mr. Simons and himself so that he could help get this straightened out. **Decker** advised that he would be happy to do that. **Kaczynski** asked if the amendments that are proposed in connection with this application involve some additional uses and asked if they are currently in operation right now. She asked if they are operating. De Sapio advised that they are operating and the additional uses is the snack concessions, and they are not being done now. **Decker** addressed De Sapio and said that the amended plans include storage of the tubes and rafts in the front of the building, the enclosures or canopies with the storage of the life jackets and the expansion of the parking to the staff. All of those activities are currently being performed at the site and were not part of the original site plan approval. **Decker** advised that there are items on the amended site plan that are active without approvals. De Sapio advised that he can make a representation of the canopies and the use for them. He advised the canopies are done to provide shelter for the patrons from the sun and also to enable more compliance with COVID requirements. **Decker** advised that the canopies that are for the storage of the life jackets are impeding the ability for the patrons to be behind those barriers that were approved as part of the site plan as a corral, if you will, to keep them safe. De Sapio advised that he can have Mr. Crance testify that they are not endangering the patrons, not impeding them from staying behind the traffic barriers and that it assists with social distancing and also because it allows those life jackets to be dried outside and not stored inside where they could be susceptible to mold. He advised there are a variety of reasons why they are doing this. He advised that it will probably happen until Labor Day and after that there would not be a need for it. De Sapio agrees that they are not in the present site plan approval. **Kaczynski** advised that until that approval is attained, whatever actions fall within that could be subject to violations and whatever else the Township Officials would seek to do. She advised from what she is hearing the application will come back before the Board after the applicants' season is over. She advised that her comment to the Board is that she doesn't believe it helps anyone to proceed with application that is not totally ready and that would be a waste of everyone's time; but if the Board is so inclined to allow the extensive adjournment to two meetings from now, she advised that she would say that it would be the last extension and at that point either the applicant proceeds or the Board makes the determination that the application would have to be refiled. De Sapio advised that they would be prepared to proceed in October. He advised that he was persistent earlier in the year to have a meeting before the COVID issue was known and he appreciates that the Board would not have meetings. He advised that it is not their intent to delay this because delay only leads to more frustration on behalf of people in the community and people in the Alexandria governing community. He advised they do not want to do that. He continued that by the same token there are some comments that need to be addressed and it doesn't seem to be productive at 10pm and that they will get you more information and that doesn't seem to be efficient. He advised that the tents are done for safety and that they do not make the patrons more unsafe, and that they are safer this way. **Decker** advised these were up last season as well when there was no COVID. De Sapio advised that he didn't mean to leave the impression that COVID was the only reason. The purpose of having those life preservers out to dry is so that people can move through quicker, get the preserver, get on the bus and go, which helps with COVID and also helps with operations. He continued what happens is with the continued influx of people, when you

hand those life preservers out the door to people, then you cannot move the customers and that creates a greater risk in the applicant's estimation because then people are lined up into the parking lot waiting to move through. They also sanitize them outside. **Decker** advised speaking of the parking area, that the original approval of 120 parking spaces within the limits as established by the site plan. The southern field of the amended application has been used for parking throughout the season. De Sapio advised that this is not testimony, however he said that he asked the applicant approximately how many days during the course of the season would they use the new area and the applicant said it would be used approximately 14 days. For the balance of May and September, all the parking occurs within the first 125 spaces, but it is true that this year they have had overflow parking that they put on that area. De Sapio continued, that what isn't the case and this is one of the things that they want to get information on to present testimony, that the Township seems to be under the impression that the property owner put gravel in that area in June of 2019. He said that it is not the case and that gravel has been there since work was done on the landfill. He advised that all that was done in June of 2019 when the area was cleaned up and weeds were removed. He advised they are trying to figure out where they can get this information for testimony before the Board and that this is one of the items that they don't believe they will have together for the September meeting. **Chair Rochelle** reiterated the time frames for the information to be before the Board and the delays that have ensued to date. De Sapio advised that he only received the latest letter in June from the engineer. He advised that there were communication issues from the last meeting that needed to be addressed from the old site plan with a new meeting between him and the engineers. **Chair Rochelle** entertained a motion to table this application to October 15<sup>th</sup>. A motion was made by **Tucker** and seconded by **Pauch**. **Ayes: Chair Rochelle, Papazian, Fritsche, Freedman, Canavan, Tucker, and Pauch.**

#### **Approval of Bills**

A motion was made to approve the bills for the professionals of the Land Use Board by **Canavan** and seconded by **Freedman**. **Vote: Ayes: Chair Rochelle, Papazian, Fritsche, Freedman, Canavan, Tucker, Deputy Mayor Kiernan, Committeeman Pfefferle, Pauch, and Kimsey. No Nays. Motion Carried.**

A motion to adjourn was made by **Tucker** and seconded by **Canavan** at 10:11pm. **Vote: Ayes: Chair Rochelle, Papazian, Fritsche, Freedman, Canavan, Tucker, Deputy Mayor Kiernan, Committeeman Pfefferle, Pauch, and Kimsey. No Nays. Motion Carried.**

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**Leigh Gronau, Board Secretary**